The Deaccession Dilemma: Laws, Ethics, and Actions

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Deaccessioning

- Traditional practice
- Controversial
- Usually legal
- Not always ethical

A collection in need of deaccessioning
Participant Poll

- What kind of museum do you work in?
  - Art
  - History
  - Historic site
  - Science
  - Other (please specify)

The Potter Museum, Bramber, England
What is deaccessioning?

- Permanent removal of an object from the collection
- Only accessioned objects can be deaccessioned
- Best control = good plans and policies
  - Collections Plan
  - Accession Policy
What is disposal?

- What happens to the object after deaccessioning
- Transfer to another non-profit
- Sale
- Destruction
- Can be controversial
Historical perspective

- Deaccessioning is as old as collecting
- The term first appeared in print early 1970s
- Attitudes have changed over time
Historical perspective

• “On occasion, worthless material may be accepted and later thrown away rather than give offense by refusing it.”
  – Laurence Vail Coleman, Secretary of the AAM, 1927
Historical perspective

• “A museum, no more than an individual, cannot constantly ingest without occasionally excreting.”
  – Thomas Messer

Thomas Messer (1920-2013)
Historical perspective

• Limited use of proceeds to “...the acquisition of collections”
  – AAM Code of Ethics, 1991

• Proceeds only to be used for “...the acquisition or direct care of collections”
  – AAM Code of Ethics, 1994
Historical perspective

- Ethics Commission did not define “direct care”
  - Hiring a conservator?
  - Fixing a leak?
  - Building a better gallery?
- AAM Direct Care Task Force (May 2015)
Participant Poll

• What do you think “direct care of collections” includes?

Earth and Mineral Sciences Museum & Art Gallery, Penn State University
Historical perspective

- Cultural differences towards deaccessioning
- European museums more reluctant to deaccession
- Nearly unheard of in Latin America

Museum studies class, Universidad Nacional de Colombia
Historical perspective

• “…there must always be a strong presumption against the disposal of objects to which a museum has assumed formal title”
  – ICOM Code of Ethics

• “Museums must remain free to improve their collections through selective disposal…and intentionally to sacrifice objects for well-considered… purposes”
  – AAM Code of Ethics
Historical perspective

- 49,700 hits in 0.48 seconds
- Links to deaccessioning policies
- Articles about deaccessioning
- Links to news stories about deaccessioning controversies
- Works of art have higher fair market value
Reasons and context for deaccessioning

- Critical tool for managing collections
- Collections are dynamic, not static
- Collections grow and change
- Collections should be reviewed and revised
- Proper collections care = careful use of resources
Museums are accountable...

- Acquisition
- Conservation
- Management

The artist in His Museum, 1822 self-portrait by Charles Willson Peale (1741-1827)
Museums are accountable...

1. Retention of all objects is expensive
2. Deaccessioning may generate funds to advance the mission
3. Deaccessioning may better serve the museum community

– Stephen Weil (1987)
Reasons for deaccessioning

• Safety
  – Unsafe to maintain
  – Too expensive to safely maintain
  – Chemical or physical deterioration
  – Source of radiation
  – Contains asbestos

Asbestos found in museum collection
Reasons for deaccessioning

- Monetary
  - To gain proceeds from sale
  - Proceeds should be used for acquisition and direct care
  - Proceeds should not be used to cover budget shortfalls

Painting conservation, Cuzco, Peru
Reasons for deaccessioning

• Improve the collection
  – Refine, upgrade, focus collection
  – Transfer objects to another institution
  – Duplicates
  – Copies
  – Substandard objects
  – Objects that have lost value

Beatty Biodiversity Centre, University of British Columbia, Vancouver
Reasons for deaccessioning

• Better serve the discipline
  – Exchange, trade, gift to sister institution
  – To promote access and use
  – Common in herbariums and natural history museums

Mining lamps, Earth and Mineral Sciences Museum & Art Gallery
Reasons for deaccessioning

• Restitution and repatriation
  - Return to owners
  - Stolen objects
  - Illegally acquired objects
  - Nazi-era art works
  - NAGPRA (Native American Graves Protection and Repatriation Act) materials

University of British Columbia Museum of Anthropology, Vancouver
Reasons for deaccessioning

- **Scope**
  - Irrelevant objects
  - Changes in scope
Reasons for deaccessioning

• No longer relevant
  – Not used
  – Loss of documentation
  – Inauthentic
  – Deterioration
Reasons for deaccessioning

- Too expensive to keep
  - Storage costs
  - Security costs
  - Preservation costs
  - Housing costs
  - Safety
  - Need expensive conservation

Field Museum, Chicago
Participant Poll

• Who owns your museum’s collection?

Institute for Southern Thai Studies Folklore Museum, Ko Yo Island
Who owns the collection?

- Who owns the museum?
- **Detroit Institute of Arts**
  - City of Detroit bankruptcy
  - Collection value $2.8 to $4.6 billion
  - City owned the collection

[Image of Detroit Institute of Arts]
Who owns the collection?

• Museum organized as trust with board of directors?
  – Museum probably owns its collection

• City, county, state, college or university?
  – Museum probably does not own its collection
Federal and state laws

- No laws prohibit the sale of objects from museum collections
  - Few exceptions
  - In general, it is legal to deaccession and dispose of objects from the collection
Federal and state laws

- Exceptions
  - Donor restrictions
  - Non-profit status and trust obligations
  - Bylaws, constitution, policies, mission

Cherry County Historical Society, Valentine, Nebraska
Donor restrictions

- Precatory restrictions
  - Cannot be deaccessioned
  - Permanently exhibited
  - Returned to donor’s heirs
  - Given to another museum

Elgin Marbles, British Museum, London
Restricted gifts

- Museums should avoid restricted gifts
  - Difficult to comply with
  - May interfere with mission
  - Take time and exhibit space

Mercer Museum, Doylestown, Pennsylvania
Donor restrictions

• *Cy près* doctrine
  – “as near as possible”
  – When it is not possible to comply with the donor’s intentions
  – Consult an attorney
  – *Example*: Barnes Foundation move

Barnes Foundation, Philadelphia
Cy près

- Law is evolving
- 49 states have a *Uniform Prudent Management of Institutional Funds Act*
- Common law gives donors a say in how restrictions are enforced
- Consult an attorney familiar with this law in your state
Non-profit status

- Most museums are non-profit
- Trustees have a duty of care
- Trustees have a duty of obedience
- Legal obligation to protect, preserve, and increase the assets of the trust
Non-profit status

• “At the very least, the board should be under obligation to institute policies... designed to further the mission... and demonstrate good-faith efforts to monitor such policy”

• *A Legal Primer on Managing Museum Collections*

• Does “increase the assets” mean sell objects for the highest price?
Bylaws, constitution, policies

• Do not have the force of law
• Can be a factor in legal challenges
• Board must abide by bylaws or constitution
• Board must support the policies
IRS notification

- Deaccession can affect the donor’s tax benefit
- Deaccession of a gift within three years must be reported to the IRS
- IRS form 8282
Sources of information

- See handout

If the fire is not in your room.

1). Remain in your room.
2). Call the front desk. Dial "0"
3). The desk will advise you of any precautions to be taken.
Professional standards

- Codes of ethics—see handout
- Ethical standards change
- Ethical standards may differ with type of museum
Keeping objects in the public domain

- Sale may remove objects from public access
- AAM Collections Exchange Center experiment
- Public domain may mean smaller profit on sale
- Let museums have first right of refusal
Credibility

- Transparency
- Maintain collections in the public trust
- Museums must use their collections in a manner consistent with donor intent and public interest

Indianapolis Museum of Art
Credibility

• Reasons for deaccession and sale
  – Deaccessions as financial emergencies?
  – Poor management by directors and boards
Credibility

• “When a for-profit organization faces a financial crisis, the sale of part of its assets is essentially a matter of business judgment... For a non-profit, the sale of assets can mean...the disposal of part of its very reason for being”

— A Legal Primer on Managing Museum Collections
Notification of donors

- Notification implies donor still has control or legal interest in a gift
- A gift means complete transfer of ownership
- Notification of donors may weaken credibility with donors and public
Participant Poll

• Does your museum have a deaccession policy?
• If so, do you think the policy is good?
Deaccessioning policy

Museum Mission

Collections Plan

Accessioning Policy

Deaccession Policy
Deaccessioning policy

- Include procedures
- Standard museum practice
- Approval of governing authority
- Compliance with board’s fiduciary duties
- Criteria for deaccessioning
- Responsibility for approval
- Written records
Deaccessioning policy elements

- Purpose
- Adherence to mission
- Comply with the law
- Comply with donor intent
- Documentation of deaccessions
- List of acceptable reasons to deaccession
- Procedural steps
Methods of disposal

- Acceptable
  - Donation to another non-profit
  - Exchange
  - Public programming
  - Repatriation
  - Return to donor
  - Sale
  - Destruction
Methods of disposal

- Unacceptable
  - Sale in museum gift shop
  - Gift or sale to staff member
  - Gift or sale to board member
  - Tossing in the dumpster
Controversies

- Museum collections as piggybanks
- Legal, but unethical
- Reflects badly on the institution
- Monetization of collection objects

Heinrich Hoffmann Museum, Frankfurt
Resisting deaccessioning

- Precatory restrictions
  - May be challenged using *cy près*
- Governance and mission
  - Difficult
  - State Attorney General
- Intended use of proceeds
  - How is money to be spent
  - Internal Revenue Service rules
Fisk University

- Sold 50% interest in Stieglitz collection to Crystal Bridges Museum of American Art
- Challenge based on donor intent
- *Cy près* case
- Collection moves between Arkansas and Tennessee every two years
- Fisk University received $30 million
Randolph College

- Sell painting from Maier Museum
- College owned the collection
- 1920 student purchase for $2,500
- Randolph College received $25.5 million
- Bad publicity, AAMD sanction
- “...semantic transformation from art as ‘education’ to art as commodity””
Brandeis University

- Decision to close Rose Art Museum
- Negative publicity
- Brandies renovated museum
Delaware Art Museum

- Planned sale of art to raise $30 million
- Debt from facilities expansion
- Bad press
- Sale earned less than $19 million
- Museum sanctioned by AAMD, lost AAM accreditation
Thank you

We’re Professionals
Do not try this at home!